

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 11/10/2022
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KENYA COBB,

Plaintiff,

-against-

UNITED STATES POSTAL SERVICE, NYC  
Manager, H.R. Dep't, and APW4,Defendants.  
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1:21-cv-6446-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

Plaintiff brought this *pro se* action under the Rehabilitation Act of 1973, 29 U.S.C. § 794 and the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 to 2654 on July 28, 2021. Dkt. No. 1. On the same day, Plaintiff filed a request to proceed in *forma pauperis*. Dkt. No. 2. By order dated September 27, 2021, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"). Dkt. No. 3.

Because Plaintiff has been granted permission to proceed IFP, she is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Accordingly, on September 28, 2021, the Court ordered that the Marshals Service effect service upon the defendants. Dkt. No. 6. On September 29, 2021, the Clerk of Court issued the summons for each of the defendants. Dkt. No. 7. On February 10, 2022, the Marshals Service filed proof of service for each of the defendants. Dkt. Nos. 10-16. All the returns show that they were unexecuted. *Id.* The returns note that no response was provided to

mailed service. *Id.* Furthermore, because employees worked remotely during Covid-19, the returns were unexecuted despite multiple in-person attempts to serve. *Id.* On September 26, 2022, the Marshals Service notified the Court that it had effectuated service on the Southern District of New York, U.S. Attorney's Office, but failed to file proof of service on the docket.

On November 4, 2022, Plaintiff submitted a letter asking that the Court re-order service and extend, *nunc pro tunc*, the deadline for filing service under Rule 4(m). Dkt. No. 22. In support of her application, Plaintiff stated that the record reflects that the attempts by the Marshals Service to serve some of the defendants had been unsuccessful. *Id.* If a plaintiff “provides the information necessary to identify the defendant, the Marshal’s failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m)” of the Federal Rules of Civil Procedure. *Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010). Because Plaintiff provided the defendants’ addresses and the record reflects that the Marshals Service failed to effect service, the Court finds that Plaintiff has established good cause for an extension of time under Rule 4(m).

Accordingly, to allow Plaintiff to effect service on Defendants United States Postal Service; United States Attorney for the Southern District of New York; Nair Reghuvaran; D. Beete (Law Department); Rolando Pasaq (Nurse); Carol Cook (Acting Finance Supervisor); M. Felix (Station Manager); M. Burns (Parcel Supervisor); and APWU NY Metro Union through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of those defendants.

The Clerk of Court is further instructed to (1) mark the box on the USM-285 forms labeled “Check for service on U.S.A”; (2) issue summonses for Defendants; and (3) deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

The Clerk of Court is instructed to issue summonses; complete the USM-285 forms with the addresses for United States Postal Service, United States Attorney, Nair Reghuvaran, D. Beete,

Rolando Pasaq, Carol Cook, M. Felix, M. Burns, and APWU NY Metro Union; mark the box on the USM-285 forms labeled “Check for service on U.S.A.”; and deliver all documents necessary to effect service to the U.S. Marshals Service.

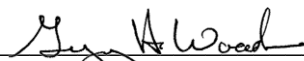
Plaintiff must notify the Court in writing if Plaintiff’s address changes, and the Court may dismiss the action if Plaintiff fails to do so.

To allow time for service to be effectuated, the initial pretrial conference scheduled for November 23, 2022 at 2:00 p.m. is adjourned to March 27, 2023 at 2:00 p.m. That conference will take place in Courtroom 12C, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY 10007.

The Clerk of Court is also directed to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: November 10, 2022  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

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7. M. Burns (Parcel Supervisor)  
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